

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WAYNE TOWNSHIP ASSESSOR,)	Petition Nos.: 49-900-01-3-3-00014
)	49-900-00-3-3-00150
Petitioner,)	49-900-99-3-3-01234
)	49-900-98-3-3-01107
v.)	County: Marion
)	Township: Wayne
MCCURDY MANAGEMENT, LLC,)	Parcel No.: 9054054
)	
Respondent.)	Assessment Years: 1998, 1999, 2000, 2001

Appeal from the Final Determination of
Marion County Property Tax Assessment Board of Appeals

January 13, 2004

FINAL DETERMINATION

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is whether a township assessor can file a Form 133 petition to challenge the actions of a county property tax assessment board of appeals (PTABOA).

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Ralph Campbell of Property Valuation Services, Inc. filed four (4) Form 133 petitions on behalf of McCurdy Management, LLC with the

Marion County Auditor seeking a change in the assessment of the subject property. The forms 133 were filed on February 21, 2002.

3. The Forms 133 sought to have the subject building priced from the GCK schedule. The Marion County PTABOA approved the claims on May 31, 2002. The Wayne Township Assessor then filed Forms 133 with the Marion County Auditor on June 11, 2002, seeking a review of the PTABOA's decision by this Board.¹

Jurisdictional Framework

4. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
5. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15.

Discussion of Issues

Whether a Township Assessor can file a Form 133 petition.

6. There are two methods in which a taxpayer may challenge his Assessment. The first is a Petition for Review of Assessment governed by Ind. Code § 6-1.1-15-3. This is the Form 130/131 process. The second is a Petition for Correction of Error governed by Ind. Code § 6-1.1-15-12. This is the Form 133 process. *See Williams Indus. v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 717, n.3 (Ind. Tax Ct. 1995).
7. There are distinct differences in the two processes. First, the Form 133 can only be used to challenge objective errors in the Assessment. The Form 130/131 can be used to

¹ On July 10, 2003, the Indiana Tax Court issued two decisions, *O'Neal Steel v. Vanderburgh County Prop. Tax Assessment Bd. of Appeals*, 791 N.E. 2d 857 (Ind. Tax Ct. 2003) and *Southworth v. Grant County Prop. Tax Assessment Bd. of Appeals*, 791 N.E. 2d 862 (Ind. Tax Ct. 2003), that held that the selection of pricing schedule, including the GCK schedule, was subjective and could not be challenged on a Form 133 petition.

challenge both objective and subjective errors. *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990). Another difference is the time frame in which the two Petitions can be filed. A Form 133 has no time frame and can be filed for any past tax year,² where a Form 130/131 is limited. *See* Ind. Code § 6-1.1-15-1.

8. Finally, Ind. Code § 6-1.1-15-3(b) specifically grants Township Assessors and members of the PTABOA the right to appeal to the Board. Had McCurdy Management filed a Form 130 in this case, the Township Assessor could have filed a Form 131 seeking review with the Board.
9. However, McCurdy Management filed a Form 133. There is no provision in Ind. Code § 6-1.1-15-12 granting a township assessors or member of a PTABOA the right to appeal to the Board. Ind. Code § 6-1.1-15-12(e) specifically states that only “[a] taxpayer may appeal a determination of the county property tax assessment board of appeals to the Indiana board for a final administrative determination.” *Id.* (emphasis added).
10. A similar situation arose in *Musgrave v. State Bd. of Tax Comm'rs*, 658 N.E. 2d 135 (Ind. Tax Ct. 1995). That case held that by statute, only a taxpayer could use the Form 133 process. *Id.* at 140.

[Taxpayer], however, did not file Forms 130. [Taxpayer] filed Forms 133, and I.C. 6-1.1-15-12 does not grant township assessors and members of a county board of review the right to appeal to the State Board from a county board of review's determination on a Form 133. The only person authorized to appeal to the State Board from a determination by a county board of review on a Form 133 is the taxpayer.

Musgrave, 658 N.E.2d at 140.

11. Because the Wayne Township Assessor is not authorized by statute to file a Form 133, the Board cannot hear the Petition. Accordingly, the petition is dismissed.

² Although errors can be corrected without a time limit, Ind. Code § 6-1.1-26-1 only allows refunds for taxes paid if the claim is filed within three (3) years. *See* IC § 6-1.1-26-1, *et seq.*

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.